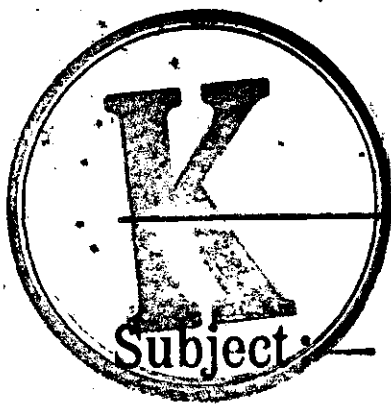


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1947.

File No. C. Gambling



Legal DEPARTMENT :
A BRANCH

Opinions under the Bombay
Prevention of Gambling Act,
1887

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The trying Magistrate has fallen into an error in holding that the provisions of the Gambling Act, regarding investigation of offences under Act are "general" and therefore subject to the provisions of the Criminal Procedure Code. The Gambling Act is one of the special penal enactments providing for a special class of offences. On the other hand the Criminal procedure Code is a general ~~xxxxxx~~ later law which does not abrogate an earlier special one unless such an intention is manifested in explicit language or unless there is something which shows that the attention of the legislature had been turned to the Special Act and that the general one was attended to embrace ~~in~~ the special cases provided for by the Special Act. (See Maxwell: Interpretation of Statutes p.156-1957) This principle has been put on a statutory basis in the Criminal procedure Code itself. Under section 1(2), any special or local law or any special jurisdiction or power conferred or any special form of procedure prescribed by any other law for the time being in force remains unaffected by the provisions of the Code. And, under section 5(2) all offences under any law other than the Indian Penal Code shall be investigated, inquired into and tried according to the provisions of the Criminal Procedure Code, but subject to any enactment for the time being in force, regulating the manner or place of investigating, inquiring or trying or otherwise dealing with such offences. Section 6 of the Gambling Act has provided for the manner of investigating or inquiring into any offence under it and therefore its provisions must prevail and ~~the~~ Criminal Procedure Code must give way. (Emperor v. Farnad I.L.R. Bom. 438-445).

The query raised by the learned Magistrate viz. whether a police officer serving in the Surat District ~~xxxx~~ could come to Broach and investigate an offence under the Gambling Act is

not quite relevant. Section 6 provides for the investigation of offences of gambling (i) in Greater Bombay, by a Sergeant or a sub-Inspector empowered by a general order in writing or authorised in each case by a special warrant issued by the Commissioner of Police and (ii) elsewhere, by a Police Sub-Inspector authorised in each case by a Magistrate of the First Class or a District Superintendent of Police or an Assistant or a Deputy Superintendent of Police specially empowered by the Provincial Government in this behalf. The jurisdiction of the police officer under section 6 therefore springs from the general order or special warrant issued to him by the officer competent to issue such order or warrant and not from the fact of his being in charge of a police station within the limits of which the offence may have been committed. It is not necessary that the officer authorised by an order or a warrant under section 6 must be an officer in charge of such police station. The view taken by the learned Magistrate is palpably incorrect.

Sd/-R 16.6.

Remembrancer of Legal Affairs.

U.R. to H.D. No.6253 dated the 17th June 1947.

In the case of *Imperator v. Hasanalli Mohomedalli* the argument was urged before the High Court that numerous clubs in the City of Bombay are flagrantly breaking the gambling laws; and Stone C.J. stood the reference over in order to give the accused an opportunity of filing a complaint before an authorised Police officer as required by the provisions to section 6 of the Bombay Prevention of Gambling Act, so that the Police Officer may upon such inquiry as he may think fit take the necessary action under that section. Apparently no such complaint is filed by the accused. However, it seems that at the suggestion of the Court, the Government Pleader wrote a letter to the Commissioner of Police, Bombay, advising him to prosecute a person or persons playing bridge in a club in Bombay with stakes, and thus to make a test case.

The Commissioner of Police considers such a prosecution inexpedient in view of the fact that the game of bridge is a game of skill, and it is so recognised all the world over.

2. It is difficult to find a judicial precedent for the rather unusual course adopted by the High Court in this case. However, that may be, the executive is now called upon to do the duty of demonstrating what *Blackstone* said long ago (Vol. 4 p.173) that "our laws against gaming are not so deficient as ourselves and our magistrates in putting those laws into execution." In discharging that duty we cannot be guided merely by considerations of public morality such as induced that same learned author to say

that "It is gaming in high life that demands the attention of the Magistrate; a passion to which every valuable consideration is made a sacrifice". The fact that card-games in clubs "incite to idleness and avaricious ways of gaining property great numbers whose time might otherwise be employed for the good of the community" must not make us disregard the requirements of the

^{law}
the law on the subject. The offence must be established in terms of that law; and English decisions given under different statutes would not be strictly relevant.

3. Under section 13 of the Act "nothing in that Act shall be held to apply to any game of mere skill wherever played". The first question which, therefore, arises is whether bridge is a game of mere skill. The following two passages from reported decisions show that we must give the expression a reasonable interpretation.

"As the Act now stands, and in particular in view of the provisions of s.13, it is clear that if a game is played for stakes, it amounts to gaming and comes within the mischief of the Act, quite irrespective of the question whether chance or skill predominates provided of course that it is not a game of mere skill, that is to say, a game in which there is no element of chance at all. Of course, if the element of chance in a game is so small as to be negligible, it may be reasonable to ignore it." (*Emperora v. Kallappa*, (1939), 41 Bom. L.R. 970 (972-973)).

"It seems a little difficult to think of any game which is absolutely devoid of all probabilities of some fortuitous element entering into the playing of it. The element of chance may be small or even infinitesimal, but in practically all pastime which can rightly be described as games even though they are, undoubtedly, games of skill, some element of chance might creep in. I make these observations for the purpose of saying that in my opinion, it is very difficult to read the word 'mere' as if it were synonymous with the word 'pure' in the strict and scientific sense of the latter word. I am therefore of opinion that one must give a reasonable interpretation to the expression 'mere skill' and should come to the conclusion that a game of 'mere skill' should be taken to mean one in which a person playing it, as far as possible in any human affairs, has complete control over the result which he sets out to attain, provided he is sufficiently expert in performance.....The real question is whether the result sought to be obtained can be achieved by the person seeking to attain it if he has sufficient expertness, to bring it about". (*Shaligram v. Emperora* (A.I.R.) 1933 Cal.8 (10)).

Judged by this criterion, it is difficult to hold that

'bridge' is not a game of mere skill. The fact that authors like

Culbertson demonstrate in their books how the element of chance inherent in the dealing of cards can be got over by the skilful method of the player is itself sufficient to show that the whole object of the game is to exercise skill. The technique of bridge

avowedly seeks to give the player control over the result of the game; and the circumstance that all do not succeed in mastering that technique gives no justification for holding that the game is not one of mere skill or that it is not a game in which the element of chance can be rendered negligible by the superior skill of the player.

The real quest in a game of bridge is how to get the best results out of a given deal of cards; and the evolution of duplicate bridge is intended to prove the superiority of the player's skill over the luck of the deal. Skill in this context naturally means the effort of the intellect to get mastery over chances; and it is such effort which one player of bridge pits against another. The true test in my opinion is: Does the game consist in the method intended to foil by skill the chance which is more or less inherent in any game? If so, it must be treated as a game of mere skill, notwithstanding the element of

chance. It is apparently for this reason that even in England, where the requirements of the common gaming house are not so stringent as in our law, no prosecution has, so far as we know, been instituted for playing bridge. In *Jacks v. Turpin* a common gaming house was defined by Smith J., as a house kept or used for playing therein at any game of chance, or any mixed game of chance and skill, in which any game is played the chances of which are not alike favourable to all the players. Had bridge been treated as a mixed game of chance and skill. - i.e. not one of mere skill - prosecutions would undoubtedly have been instituted long ago.

4. Section 13, in my opinion, is thus the strongest impediment in the way of a successful prosecution for playing bridge in clubs.

Curiously enough on this point the C.J. has not expressed any opinion, although this was precisely the point on which guidance was most needed. It is, therefore difficult to say what view the Court would ultimately take. The other requirements of keeping a common gaming house can be established in most cases within the definition given in section 3.

and we need not invoke the aid of English decisions. I agree that Broomfield J's observations in the case of Emperor v. Kallappa 41 Bom. L.R. 970, at p.973 in regard to clubs need not preclude a prosecution if the requirements of the definition of a common ~~gaming~~ gaming house are otherwise established in the case of a club.

5. In my opinion, therefore, it would not be advisable to launch a prosecution for playing bridge in a club, merely for the sake of inviting a ruling from the High Court. It would be unjust to harass any institution or person with a prosecution primarily for taking a speculative chance of winning in a legal debate.

Sd/-

Remembrancer of Legal Affairs.

U.R. to H.D. No.6415 dated 20.6.47.